

## PROPOSED PROBATE COURT RULE

### **RULE \_\_\_\_ . MUPC Magistrates; Scope of Delegable Duties; Effect of Orders Entered in Formal Proceedings.**

This rule shall govern the designation and duties of magistrates pursuant to the provisions of G.L. c. 190B.

**a) Magistrates' Designation.** The first justice of each division of the probate and family court, may with the approval of the chief justice of the probate and family court, designate one or more qualified officials of the court to act as magistrate pursuant to G.L. c. 190B, §1-307, by a written order filed and recorded in the Registry of the court.

A register of the probate and family court shall be designated magistrate pursuant to G.L. c. 190B, §1-307, by the first justice of the division in which he or she serves, upon request to the first justice, and with the approval of the chief justice of the probate and family court.

A first assistant register, assistant register or deputy assistant register, may be designated magistrate, pursuant to G.L. c. 190B, §1-307, by the first justice of the division in which he or she serves, subject to specific authorization by the register, and with the approval of the chief justice of the probate and family court, by a written order filed and recorded in the Registry of the court.

An official designated magistrate by the first justice may not delegate the power, responsibilities or duties without the prior approval of the first justice.

**b) Magistrates' Removal.** An individual designated as magistrate pursuant to section (a) may be removed from that office by the first justice of the division, with the approval of the chief justice of the probate and family court, by revoking the order of designation.

**c) Scope of Delegable Duties.** A magistrate designated pursuant to section (a) may perform the acts and issue orders as specified in G.L. c. 190B, including, but not limited to, informal proceedings and the following administrative duties, all as exercised under the supervision of the first justice of the division where he or she serves, unless otherwise ordered by the court:

1. To approve any bond of a personal representative in an informal proceeding;
2. To approve the bond of a guardian or conservator;
3. To admit a valid and unrevoked will to formal probate under §3-409 and determine heirs, if uncontested or assented to in writing or if there is no objection to such admission or determination by any interested person;
4. To appoint a personal representative with priority for appointment, determine heirs and approve any bond of the personal representative in a formal proceeding, if uncontested or assented to in writing or if there is no objection to such appointment by any interested person;
5. To enter estate closing orders in formal proceedings, if uncontested or assented to in writing or if there is no objection to the entering of such order by any interested person;
6. To perform such other acts as the court may authorize as necessary or incidental to the conduct of informal and uncontested formal proceedings.

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**d) Effect of Orders Entered in Formal Proceedings.** A magistrate acting on an unopposed petition in a formal proceeding must indicate that the action was taken by the magistrate and not by a justice. Any interested person aggrieved by the action of a magistrate in a formal proceeding may be reheard by a justice provided that a motion for a rehearing is filed within five days of the giving of notice of the action of the magistrate.

### **Reporter's Note –**

This Rule is adopted as a result of the enactment of the Massachusetts Uniform Probate Code, G.L. c. 190B. Sections 62B and 62C of chapter 221 of the General Laws, inserted by St.1978, c. 478, §250, established the office of Magistrate in all Departments of the Trial Court and gave to that official certain quasi-judicial powers. This rule is not intended to expand or contract the powers which such statutory Trial Court Magistrates may exercise in the Probate and Family Court, but rather to create the new and separate position of MUPC Magistrate in that court.

Section (d) of this Rule, Effect of Orders Entered in Formal Proceedings, is intended to clarify the difference between an order entered by a magistrate in an informal proceeding and an order entered by a magistrate in an unopposed formal proceeding under the Code. The denial of a petition for informal probate or appointment by a magistrate cannot be appealed. Instead, the proponent may initiate a formal proceeding so that the matter may be brought before a judge in the normal way for contested matters.